

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

In Re:

RHA STROUD, INC.,¹
Debtor.

) Case No.: 20-13482

) Chapter 11

) [Jointly Administered]

**RURAL HOSPITAL ACQUISITION'S SUR-REPLY TO THE DEBTORS' REQUEST
TO USE CASH COLLATERAL**

Submitted by:

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First Physicians Business Solutions, LLC, First Physicians Services, LLC, and First Physicians
Resources, LLC (collectively referred to herein as "FP Group")*

Dated this 9th day of December 2020.

¹ The Debtors in these cases, along with the last four digits of their federal tax identification numbers, are: RHA Stroud, Inc. (2635) and RHA Anadarko, Inc. (2528). The principal place of business for the Debtors is 2308 Highway 66 West, Stroud, OK 74079 and 1002 East Central Blvd. Anadarko, OK 73005, respectively.

A. The Debtors are Hopelessly Administratively Insolvent²

Debtors admit that RH Acquisition holds first priority liens over all of Debtors' assets, including "cash-on-hand,"³ and "all accounts of the Debtors and any and all rights of the Debtor to the payment of money or other forms of consideration of any kind."⁴ Debtors' Schedules also declare that RHA Stroud had \$1,092,992, and RHA Anadarko had \$1,860,780.00 in cash when these cases were filed, not including other Cash Collateral such as accounts receivable. RH Acquisition believes Debtors had far more cash. Either way, RH Acquisition's Cash Collateral was real and significant. But, Debtors cannot provide any adequate protection to RH Acquisition.

The Income Statements and Six-Month Budgets attached to Debtors' December 2, 2020 *Initial Report* [Dkt. 217] show substantial losses for both Hospitals. Debtors' 13-week budgets, first provided on December 4, 2020, prove that Debtors are administratively insolvent. For example, RHA Stroud's 13-week budget shows that its weekly *deficit* ranges from a high mark of an 82% shortfall, to a low mark of a 35% weekly cash shortfall. Further, the 13-week budget (i) overestimates income, (ii) underestimates actual day to day expenses, and (iii) fails to include any accruals for adequate protection payments, real property usage, accrued professional fees, or other administrative expenses. *See* RHA Stroud 13-Week Budget attached hereto as **Exhibit 1**.⁵

RHA Anadarko's 13-week budget opines that it will not lose as much money as RHA Stroud but, it will lose money. It shows RHA Anadarko with deficits in 9 out of 13 weeks. The four weeks without deficits are believed to be error, again, because both budgets overestimate

² Capitalized terms not defined herein are as defined in RH Acquisition's *Limited Objection to Debtors' Motion to Use Cash Collateral* [Dkt. 20].

³ *See Debtors' Motion to Use Cash Collateral* [Dkt. 4, page 3, at ¶4].

⁴ *Id.* at page 11, ¶26; *see also* Dkt. 6, ¶¶85 and 93.

⁵ The "Leases and Rentals" category on Debtors' 13-week budgets appear to be equipment leases, as Debtors' building holdover lease payment, or even what would have been a regular lease payment, is higher than what is projected in the lease and related category.

income, understate expenses, and omit accruals for adequate protection payments, real property usage, and other costs. *See* RHA Anadarko 13-Week Budget attached hereto as **Exhibit 2**.

Additionally, the parties' *Order Authorizing the Hospitals' Use of Cash Collateral and Scheduling a Final Hearing on November 17, 2020* [Dkt. 100] (the "Interim Cash Collateral Order") authorized FP Group to submit weekly invoices to Debtors' representative, Charles Eldridge ("Mr. Eldridge"), the payment of which he must approve or disapprove within 36 hours of receipt. *See* Interim Cash Collateral Order at ¶5(c.). While Mr. Eldridge timely approved FP Business' first weekly invoice for management and staffing fees, he refused to approve the second weekly invoice, forcing FP Group to file its *Motion to Show Cause, With Brief, And with Notice of Expedited Opportunity for Hearing* [Dkt. 142]. This resulted in an Agreed Order in which Debtors approved and paid FP Group's second weekly invoice and third weekly invoice, which became due during that dispute.

FP Business' fourth weekly invoice was submitted to Mr. Eldridge last week, and he has again refused to approve staffing or management expenses. He did not even approve \$1.00 of the invoice on either Hospital. It is anticipated that Mr. Eldridge will also refuse to approve this week's (i.e., week of December 7, 2020) management and staffing invoices. Likewise, it appears that the Debtors are attempting to build up a new reserve, according to their budget, as opposed to paying for staffing and management. *See* Exhibits 2 and 3, respectively. Either way, RH Acquisition does not consent to the use of its Cash Collateral under these circumstances.

B. Debtors Admit the Leases Leave No Way to Reorganize

Mr. Eldridge admitted at Debtors' 11 U.S.C. § 341 meeting of creditors (the "341(a) hearing") that Debtors' real property leases terminated before bankruptcy.⁶ A lease agreement

⁶ Section 341(a) hearing transcript, a true and correct copy of the pertinent pages of which is attached hereto as **Exhibit 3** at 35:4-11.

which is validly terminated under state law may not be resurrected by a bankruptcy petition. “[W]hatever rights a debtor has in property at the commencement of the case continue in bankruptcy – no more, no less.” *In re Caisson Labs., Inc.*, BR 14-31344, 2015 WL 1239216, at *5 (Bankr. D. Utah Mar. 13, 2015). “Further, a court may not revive a terminated lease simply because it is important or essential to reorganization efforts. *See In re Mako, Inc.*, 102 B.R. 814 (Bankr. E.D. Okla. 1988) (finding that a lease terminated before bankruptcy will not be revived); *In re Caisson Laboratories, Inc.*, 2015 WL 1239216 at *1.

Courts examine the actions of the lessor when determining whether a lease agreement has terminated prior to bankruptcy. For example, the *Mako* court found that a notice of default was provided to the lessee, along with a cure period.⁷ A forcible entry and detainer action was filed to evict the lessee from the property.⁸ The *Mako* court determined these actions “serve as an ‘unequivocal act’ of the Lessor’s intent to terminate...”⁹

Here, the Debtors failed to pay real property lease payments before the Receivership Case was filed. The Debtors were provided with a “right to cure” letter as required by the leases, but they failed to cure the default within the applicable 30-day cure period. To re-enter through lawful means, FP Realty sued the Debtors for (1) past due rents and (2) eviction, in conjunction with its request for a state court receiver over Debtors. These unequivocal actions evidenced FP Realty’s termination of Debtors’ leases.

Finally, Debtors have failed to either pay any amount for post-petition use of the hospital buildings, or even include such payments as a 13-week budget item. FP Realty has joined in FP

⁷ *In re Mako*, 102 B.R. at 817.

⁸ *Id.*

⁹ *Id.*

Group's pending motion to dismiss this case for this and other reasons, and has not consented to Debtors' uncompensated use of its property. Ultimately, Debtors cannot reorganize without the terminated leases, and should not be allowed to squander RH Acquisition's Cash Collateral.¹⁰

C. There is no Substantial Cost Savings Under New Management Agreements.

The Debtors' claim that replacing FP Group with Arcadia will result in substantial cost savings that will increase the Hospitals' profits. *See, e.g.*, Dkt. 134 at ¶31. This claim wholly ignores that Medicare reimbursement rules render it virtually impossible for the Debtors to generate any free cash flow by replacing a manager. The hospitals are critical access hospitals ("CAH") and, therefore, reimbursed by Medicare at 101% of costs. A CAH hospital does not work like a regular business where a decrease in costs increases profits. When management costs are lowered at a CAH, the reimbursement from Medicare will be lowered proportionally. Mr. Eldridge admits as much in the 341(a) hearing.¹¹ Thus, a decrease in management fees may potentially lower monthly losses on the hospitals' books, but it will also necessarily lower revenue, which will *not* provide meaningful free cash flow or profit to these hospitals.¹²

D. The Debtors have no Funding Source to Rescue these Cases from Failure

RHA Stroud admits it owes RH Acquisition at least \$8,097,684.06, while RHA Anadarko admits it owes at least \$6,891,990.60. *See* Dkt. 1. Mr. Eldridge testified at the 341(a) hearing that Debtors only sporadically paid interest on RH Acquisition's notes before bankruptcy.¹³ Debtors'

¹⁰ A debtor engaged in a futile attempt to reorganize should not be permitted to jeopardize a creditor's cash collateral. *In re Hari Ram, Inc.*, 507 B.R. 114, 125 (Bankr. M.D. Pa. 2014) (citing *In re C.F. Simonin's Sons, Inc.*, 28 B.R. 707, 711 (Bankr. E.D.N.C. 1983); *Sharon Steel Corp. v. Citibank, N.A.*, 159 B.R. 165, 172 (Bankr. W.D. Pa. 1993) (holding that debtor could not use cash collateral when plan was unrealistic and unattainable).

¹¹ **Exhibit 3** at 38:24-39:10.

¹² *Id.* at 37:22-39:5.

¹³ *Id.* at 32:11-16.

financial documents demonstrate that they are administratively insolvent, and cannot successfully exit bankruptcy. The question arises: can Debtors' sole owner, One Cura, provide the money needed for Debtors to emerge from bankruptcy? The answer is no.

Mr. Eldridge testified that One Cura's only source of income is what Debtors pay it.¹⁴ He also stated that One Cura has paid between \$100,000.00 and \$500,000.00 to Akerman, LLP, for attorneys' fees owed by the Debtors.¹⁵ This testimony is inconsistent with Akerman's recent Declaration stating that One Cura paid it \$1,341,572.44 before bankruptcy, none of which was for bankruptcy related work. *See* Dkt. 249-1, at ¶ 6. It is reasonable to believe that Mr. Eldridge would remember paying Akerman over \$1.3 million within the last 45 days; but, he did not divulge that information. Mr. Eldridge also testified that the payments to Akerman left One Cura with only \$100,000.00 in the bank.¹⁶ As One Cura has obligated itself to pay an *additional* \$155,682.45 to Akerman for fees owed by Debtors, One Cura is insolvent and cannot help finance Debtors.¹⁷

Finally, Debtors have not brought any post-petition lenders to the Court. Mr. Eldridge has testified that the leases cannot be cured – even if FP Realty allowed them to be reinstated – as One Cura does not have sufficient funds to cure, and Debtors have no third party willing or able to cure the leases.¹⁸ Consequently, RH Acquisition no longer consents to the use of its Cash Collateral because the Debtors are simply unable to reorganize the hospitals under current ownership.

¹⁴ *Id.* at 22:10-13.

¹⁵ *Id.* at 32:9-25.

¹⁶ *Id.* at 67:21-68:15.

¹⁷ *See* Declaration Dkt. 249.1 at ¶9.

¹⁸ **Exhibit 3** at 35:12-37:2.

CERTIFICATE OF SERVICE

This shall certify that on this 9th day of December, 2020, I electronically transmitted the attached document to the Court Clerk using the CM/ECF System and transmittal of a Notice of Electronic Filing to the counsel registered for ECF in this case.

This shall further certify that on this 9th day of December, 2020, I served a true and correct copy of the above and foregoing via U.S. Mail, postage prepaid, to the parties listed on the Matrix attached hereto and on all parties listed below:

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